contains no qualifying words as those found in section 177 of our Criminal Procedure Code. The principle of interpretation is that where the words of a section in a statute are plain, the court must give effect to them, and the court is not justified in depriving the words of their only proper meaning in order to give effect to some intention which the court imputes to the legislature from other provisions of the Act. Such a course can only be justified where a literal construction of the section is inconsistent with the meaning of the statute as a whole. In my view, section 417 is designed for a special situation and as such can be regarded as an exception to the general rule laid down in section 138. The legislature is presumed to know the law. If provision for a preliminary inquiry with a view to committal is expressly provided in section 177 the legislature would, if so minded have made similar provision in section 417. The plain and literal meaning of "transfer" which is the only word used in section 417 is to remove a case from one venue to another. As was stated in *Magor and St. Mellons Rural District Council* v. *Newport Corporation*,[4] in the construction of a statute the duty of the court is limited to interpreting the words used by the legislature and it has no power to fill in any gaps disclosed. To do so would be to usurp the functions of the legislature.

In this case it was the appellant and not the prosecution who applied for a transfer of the case which could be summarily disposed of in the sessions court. If section 417 is to be construed as restricting the power of a High Court judge to make a direct transfer without a preliminary inquiry such a construction might lead to a result which I consider irrational or unfair. To adopt the view that this case ought to have been tried only after a preliminary inquiry is to invite the possibility that the appellant may be discharged at the conclusion of the inquiry for insufficient evidence. Should that happen the purpose for which section 417 was enacted would be completely nullified or frustrated. In my respectful view different provisions of a statute should be given an interpretation which would make them consistent, rather than one which makes one provision inconsistent with the other. Section 417, as I have construed it, is in my judgment consistent with section 138. By this I mean that in an exceptional case a person can be tried by the High Court even though he has not been committed for trial after a preliminary inquiry. I so rule.

Trial declared null and void.

MUNICIPAL COMMISSIONER, MALACCA v. TEH CHWEE SWI

[A.Cr.J. (Sharma J.) October 4, 1971]

[Malacca — Criminal Appeal No. 1 of 1971]

Criminal Law and Procedure — Appeal in the name of departmental head instead of Public Prosecutor — Effect of — Criminal Procedure Code (S.S. Cap. 21) s. 402(6), (8)(ii) (b).

This was an appeal by and in the name of the Municipal Commissioner. The respondent was charged under section 144(10)(b) read with section 144(10) of the Municipal Ordinance, and was convicted and sentenced to a fine of $150. This appeal concerned the refusal of the learned magistrate to make a mandatory order contemplated under section 144(10) of the Municipal Ordinance.

The issue for determination was whether the commissioner could file an appeal in his own name and right under the provisions of the Straits Settlements Criminal Procedure Code.

Held: the Public Prosecutor was the only person who could have appealed by virtue of section 402(6) of the Straits Settlements Code. Therefore the present appeal by the commissioner was incompetent and accordingly dismissed.

MAGISTRATE'S CRIMINAL APPEAL.

S. C. Navarednam for the appellant.

Anthony Taye for the respondent.

Sharma J., (delivering oral judgment): This is an appeal by and in the name of the Commissioner of the Municipality of the Town and Fort of Malacca. The respondent was charged under section 144(10)(b) read with section 144 (10) of the Municipal Ordinance in that he had replaced the attap roofing of premises No. A Jalan Bukit Serendit with ardex sheets without the prior approval of the Municipality. The respondent was convicted and sentenced to a fine of $150. The prosecuting officer applied for a mandatory order for the replacement of the ardex roofing with attap roofing under section 144(10) of the Municipal Ordinance. The learned magistrate did not make the mandatory order as required under section 144(10) and the present appeal is against that part of the order of the learned magistrate which refused to make a mandatory order contemplated under section 144(10) of the Municipal Ordinance. The only point of interest in this appeal is whether the Commissioner of the Municipality of the Town and Fort of Malacca can file an appeal in his own name and right under the provisions of the Criminal Procedure Code. Section 402(1) of the Straits Settlements Criminal Procedure Code reads as follows: —

"The Attorney-General shall be the Public Prosecutor and shall have the control and direction of criminal prosecutions and proceedings under this Code."

An appeal to the High Court is a proceeding under the Code. Section 402(8)(ii)(b) creates an exception in that an officer of a government department or local authority can appear and conduct any prosecution for an offence against any written law which it is the duty of the department or authority specially to enforce. That provision, however, is confined to summary non-seizable cases triable in the court of a magistrate. If that provision was not there in the Criminal Procedure Code it would not be competent for an officer of a government department or local authority to appear and prosecute a case in which that depart-

ment or authority might be concerned. Section 402(6) of the Straits Settlements Code reads as follows: —

"No person shall appear on behalf of the Public Prosecutor in any criminal appeal.... other than the Public Prosecutor or the Solicitor-General or by a deputy appointed under sub-section (3) or by an advocate authorised under sub-section (4)."

In view of the fact that it is only the Public Prosecutor who could have appealed in this case I am of the view that the present appeal by the Commissioner of the Municipality of the Town & Fort of Malacca is incompetent and it is consequently dismissed.

Appeal dismissed.

Solicitors: *Koh Kim Leng & Co.; P. G. Lim & Co.*

LEE SOO CHUAN v. LAI AH YAN & ANOR.

[O.C.J. (Abdul Hamid J.) October 11, 1971]

[Kuala Lumpur — Originating Motion No. 28 of 1971]

Practice and Procedure — Appeal from court of senior inspector of mines — Whether a court within the meaning of "subordinate court" — Mode of appeal — Courts of Judicature Act, 1964, s. 3 — R.S.C., 1957, O. 59, rr. 1 & 2.

This was an application for an order that the originating motion dated July, 9, 1971, and all subsequent proceedings be set aside. The applicants, respondents in that originating motion, were seeking an order that the decision of the senior inspector of mines given in a civil suit in the senior inspector of mines' court, Kuala Lumpur, be set aside.

Counsel for the applicants submitted that the senior inspector of mines, in exercising the power under section 97(ii) of the Mining Enactment, sat as a court within the meaning of the definition of "subordinate court", as defined under the Courts of Judicature Act, 1964. He further submitted that O. 39 r. 2 of the Subordinate Courts Rules should apply in an appeal from any order or decision of a mining court, and that such appeal should not be by way of originating motion.

On the other hand, respondents' counsel submitted that a mining court was not a subordinate court for purposes of the Subordinate Courts Rules, and that an appeal from the senior inspector of mines' court was not an appeal from a subordinate court but rather an appeal from a person, and therefore O. 59 r. 13 of the R.S.C. 1957, should have applied.

Held, allowing the application: (1) the senior inspector of mines not only possesses the powers of a first class magistrate for the purpose of compelling the attendance of witnesses, maintaining order in his court, but also for carrying into effect the provisions of the Mining Enactment. In dealing with the cases that the Enactment requires him to hear and decide, the senior inspector of mines follows the procedure prescribed for an inferior court. Therefore, the court of the senior inspector of mines comes within the meaning of "subordinate court" as defined under section 3 of the Courts of Judicature Act, 1964. Thus, if a mining court is an inferior court, then rules 1 and 2 of Order 59, R.S.C., 1957, would apply, dealing with the procedure governing appeals from both subordinate courts and statutory bodies;

(2) the proceedings by way of originating motion was not the proper procedure to adopt on an appeal from the decision of the senior inspector of mines.

Cases referred to:-

(1) *Sundram* v. *Chew Choo Khoon* [1968] 2 M.L.J. 40.

(2) *Leong Quake Hin* v. *Lee Kor Fan* [1967] 1 M.L.J. 80.

(3) *In re application of* (1) *Chong Fye Lee* and (2) *Toong Hing Loong Tin Mining Co. Ltd.* [1965] 1 M.L.J. 29.

MOTION.

T. K. Tang for the appellant.

V. P. Nathan for the respondents.

Cur. Adv. Vult.

Abdul Hamid J.: This is an application asking for an order that the originating motion dated the 9th day of July, 1971 and all subsequent proceedings be set aside. The applicants, the respondents in that originating motion, are seeking for an order that the decision of the senior inspector of mines, Selangor given on 17th June 1971 in civil suit (Selangor) No. 3 of 1970 in the Senior Inspector of Mines' Court, Kuala Lumpur whereby the said senior inspector of mines ordered that the sublease over mining certificate No. 1517 be cancelled, be set aside.

Mr. T. K. Tang, counsel for the applicants submitted that the senior inspector of mines, in exercising the power under section 97(ii) of the Mining Enactment, sits as a court within the meaning of the definition of "subordinate court" as defined under the Courts of Judicature Act, 1964. He submitted that O. 39 r. 2 of the Subordinate Courts Rules should apply in an appeal from any order or decision of a mining court. Such appeal should not be by way of originating motion.

Mr. V. P. Nathan, counsel for the respondents (applicants in the originating motion) submitted that a mining court is not a subordinate court for purposes of the Subordinate Courts Rules and an appeal from the senior inspector of mines is not an appeal from a subordinate court but an appeal from a person and O. 59 r. 13 of the Rules of the Supreme Court 1957 should apply. In support of his contention, Mr. Nathan cited the case of *Sundram* v. *Chew Choo Khoon*.[1] In that case, Chang Min Tat J. dealt with an appeal against the decision of the Collector of Land Revenue who disallowed the application of the chargor for the adjournment or foreclosure action instituted by the chargee. The learned judge held that —

"The procedure for an appeal from a statutory body to the High Court is laid down in O. 59 r. 13 of the Rules of the Supreme Court. On the construction of the word 'motion' in rule 13 (1), such an appeal must be lodged by the originating motion for the following reasons:

(i) a statutory body, though vested with judicial powers, is not a subordinate court within the meaning of section 3 of the Courts Ordinance, 1948. An appeal from the decision of such a statutory body is an origination and not a continuation of the judicial process:

(ii) the deliberate use of 'motion' in O. 59 r. 13 (1) in contradistinction to 'notice of motion' in the corresponding English rule — O. 59 r. 38 established that under O. 59 r. 13 (1) of the local Rules of the Supreme Court, an appeal from a statutory body must be lodged by an originating motion;"

Mr. Nathan also drew my attention to those cases which were cited in *Sundram's* case, *supra*. Referring to *Leong Quake Hin* v. *Lee Kor Fan*,[2] Mr. Nathan submitted that the procedure adopted in that case was wrong. This was an appeal from the decision of the senior inspector of mines rejecting the appellant's claim for cancellation of a mining lease brought by way of a civil appeal from a subordinate court.

As regards *Sundram's* case, *supra*, I see no reason to disagree with the decision of the learned judge.